SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950 51

No. ~~592~~ 12

JOSEPH EDWARD MORISSETTE,
Petitioner,

vs.

THE UNITED STATES OF AMERICA

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

ANDREW J. TRANSUE,
Counsel for petitioner.

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No. 593

JOSEPH EDWARD MORISSETTE,

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vs.

UNITED STATES OF AMERICA,

Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Andrew J. Transue, attorney for petitioner, Joseph Edward Morissette, prays that writ of certiorari issue to review the judgment entered in this case on the 5th day of February, 1951, by the United States Court of Appeals for the Sixth Circuit.

Summary and Short Statement of Matter Involved

The petitioner, Joseph Morissette, was born in Flint, August 15, 1921. His father died when he was sixteen years of age and he went to the CC Camp because he had no other means of living at home. His mother died when he was

seventeen. He had never been arrested or convicted of anything except reckless driving before this occurrence. He served as a soldier during World War II and was honorably discharged. He worked at fruit markets and hauled scrap iron and did a little trucking. He had worked at the A. C. Spark Plug Company for four and a half years. He hauls Christmas trees every year. He is married and at the time of the trial had one child six years of age. In the fall of 1948, Joe Morissette, with some other acquaintances, went hunting deer and part of their hunting was on the Oscoda Air Base Range, a thickly wooded part of the State of Michigan and good deer country (R. 30). Petitioner's exhibits one to six are pictures of old bomb cases which look like the ones that petitioner took in broad daylight at about one or two o'clock in the afternoon while eight or ten people passed through there, a couple of cars drove by and one coupe stopped (R. 31). The old bomb cases were loaded on petitioner's truck and taken to his uncle's farm where they lay in plain view of the road and when they finished deer hunting petitioner took a tractor and run over the old bomb cases so he could get a bigger load of other junk. The old bomb cases were reloaded on the truck with the other junk and petitioner started for Flint, a distance of one hundred eighty miles, with it, stopping at a locker plant to pick up the deer his friend Collins had killed. He started in broad daylight in the afternoon. The old bomb cases were in plain view. He stopped to talk to an acquaintance at the junction of roads 171 and 23 (R. 32). He parked his truck on the highway in front of a restaurant. He made no effort to conceal anything, as he didn't think there was any reason for him to conceal anything. He sold the old casings to the Laro Coal Company in Flint, Michigan. A little later on the State Police stopped him when he was on his way down from Cheboygan with Christmas trees. He readily told the State Police all

that had happened (R. 33 and 22 and 23). Later on petitioner heard the FBI wanted to see him and he went down right away and told him freely what had occurred (R. 34 and 24 and 25) and he told the FBI agent that he did not know that these bomb casings were not to be removed from where they were. The old bomb cases were piled up from 1944 and had been exposed to the weather. They were pretty well rusted out, some of them so rusted that they are practically decomposed and some of them are in the process of decomposition (R. 15). The foregoing is also shown by pictures offered as exhibits and identified at the trial.

The following indictment was filed May 12, 1949.

The Grand Jury charges:

That on or about the 2nd day of December, A. D., 1948, at Oscoda, Michigan, in the Eastern District of Michigan, Northern Division, Joseph Edward Morissette, did unlawfully, wilfully and knowingly steal and convert to his own use about three tons of used bomb casings having a value of approximately $84.00, and being the property of the United States of America, located at the bombing range of the Oscoda Army Air Base, in violation of Section 641, United States Code, Title 18 (R. 3 and 4).

A jury trial was had in the District Court for the Eastern District of Michigan, Northern Division, Honorable Frank A. Picard, District Judge, presiding, commencing on June 13 and 14, 1949. Verdict was entered on June 14, 1949, finding the petitioner guilty of the charge in said indictment contained (R. 55 and 56).

The only issue was the claim of the petitioner on the trial that the old bomb cases had been abandoned and he had no felonious intent in taking them and converting them to his use. The District Judge would not allow this issue to be argued or presented to the jury and refused petitioner's

request to charge as to the necessity of felonious intent and in regard to abandonment. The court, in its charge, said:

> "Ordinarily there is a question of fact for the jury. I don't think there is any question of fact for the jury, except whether you believe one story or the other. You can go up there and come down and say not guilty. But if you follow the instruction of the court, you have got to believe one story or the other, or it is up to you to believe one story or the other. And I instruct you to this effect: That if this young man took this property (and he says he did), without any permission (he says he did), that was on the property of the United States Government (he says it was), that it was of the value of one cent or more (and evidently it was), that he is guilty of the offense charged here. If you believe the government, he is guilty" (R. 52 and 53).

The Court further said in the presence of the jury:

> "The question on intent is whether or not he intended to take the property. He says he did. Therefore, if you believe either side, he is guilty" (R. 53).

The same issues were presented to the Sixth Circuit Court of Appeals for the Sixth Circuit before Allen, Martin and McAllister, Circuit Judges. Martin, Circuit Judge, wrote the majority opinion and held that the Court's charge was correct and that the element of felonious intent and of abandonment were not in the case or necessary for conviction under Section 641, Title 18, United States Code. McAllister, Circuit Judge, dissented and wrote a dissenting opinion to the effect that felonious intent is a question for the jury under this section of the statute and that the question of abandonment was raised by the testimony in this case and should have been submitted to the jury with proper instructions.

Statement Particularly Disclosing the Basis upon Which It Is Contended the Supreme Court Has Jurisdiction to Review the Judgment of the Sixth Circuit Court of Appeals in Affirming the Judgment and Conviction of the Petitioner.

1. Federal Rules of Criminal Procedure, rule 37, b2. The judgment of the Circuit Court of Appeals for the Sixth Circuit was dated February 5, 1951.

2. Section 1254, Title 28, United States Code:

> "Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree * * *

Section 641, Title 18, United States Code, is a part of chapter 31 of the code of criminal procedure entitled embezzlement and theft and is as follows:

> "Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or Whoever receives, conceals, or retains the same with intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—Shall be fined not more than $10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both. The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater. June 25, 1948, c. 645, 62 Stat. 725."

The Question Presented

1. Is a felonious intent a necessary ingredient of the crime charged against the petitioner under the foregoing statute, Section 641, Title 18, United States Code.

2. Should the petitioner's requested instructions on abandonment been given to the jury by the trial court.

3. Should petitioner's instruction to the effect that the taking was open and notorious, showing an absence of felonious intent had been given.

4. Did the trial court direct a verdict of guilty and if it is not a direct verdict of guilty, is it so argumentative and biased as to constitute reversible error.

Reasons for Granting the Writ

Section 641, Title 18, United States Code, under which the indictment against petitioner was brought and a verdict of guilty rendered by the jury consolidates Sections 82, 87, 100 and 101 of Title 18, United States Code, 1940 edition. The indictment in this case charges that petitioner did unlawfully, wilfully and knowingly steal and convert to his own use, property of the United States. Practically the same language is found in Section 87 of Title 18, United States Code, 1940 edition. The cases under Section 87 show that a felonious intent or guilty knowledge is an ingredient of the crime of converting property to the use of the person charged. *Adolfson* v. *U. S.*, C. C. A. Cal. 1947, 159 F. 2d 883. *U. S.* v. *Trinder*, D. C. Mont. 1932, 1 F. Supp. 659. *Tredwell* v. *U. S.*, 266 F. 350

A thorough search has been made and the decision of the Circuit Court of Appeals in this case is the only one that can be found construing Section 641, Title 18, United States Code, and it is the only case either before the consolidation of Sections 82, 87, 100 and 101 of Title 18, 1940 edition, or

the new section holding that felonious intent is not an element of the crimes denounced by the statutes. This decision is in conflict with all of the decisions of the Circuit Courts of Appeals prior to the consolidation and is the only decision since consolidation. The decision in this case is in conflict with applicable decisions of this court and, so far departs from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

Since the questions presented are of general importance and since the decision below conflicts with other decisions, a construction of Section 641, of Title 18, United States Code, is important and since the decision below conflicts with all prior decisions of the statute before consolidation and since this is the only decision construing Section 641 since its enactment and since it is a decision by a divided court and there is a strong opinion of dissent in this case, the petition for writ of certiorari should be granted. And since petitioner believes that the intent with which he took the bomb cases is the heart of this case, the pictures showing the ones that remain, which are petitioner's exhibits one to six, inclusive, in this case, now in the custody of the Circuit Court of Appeals, are worth more than words to determine whether a substantial question is involved. Petitioner prays that these pictures be brought up to this court to aid the court in determining whether the writ will be granted.

Respectfully submitted,

ANDREW J. TRANSUE,
Attorney for Petitioner,
303 Dryden Building,
Flint, Genesee County, Michigan.

Dated: March 5, 1951.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1950

No. 593

JOSEPH EDWARD MORISSETTE,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent

BRIEF SUPPORTING PETITION FOR WRIT OF CERTIORARI

The verdict of guilty, as charged in the indictment contained, convicted petitioner, Joseph Edward Morissette, of unlawfully, wilfully and knowingly stealing and converting to his own use, property of the United States.

The indictment, as brought under section 641 of Title 18, United States Code, which provides:

> "Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or Whoever, receives, conceals, or retains the same with

intent to convert it to his use or gain, knowing it to have been embezzled, stolen, purloined or converted—Shall be fined not more than $10,000 or imprisoned not more than ten years, or both; but if the value of such property does not exceed the sum of $100, he shall be fined not more than $1,000 or imprisoned not more than one year, or both. The word "value" means face, par, or market value, or cost price, either wholesale or retail, whichever is greater. June 25, 1948, c. 645, 62 Stat. 725."

Petitioner contends that in order to constitute a crime there must have been a felonious intent in his mind at the time he took the bomb cases and converted them to his own use. The District Judge and the majority opinion of the Circuit Court of Appeals held that the element of felonious or evil intent is not necessary to be guilty of the crime charged. The trial court and the Circuit Court of Appeals in the majority opinion further held that the issue of abandonment had not been raised and that the state of petitioner's mind in regard to whether the property had been abandoned made no difference and that the petitioner would be guilty of the crime charged if he took the property believing it to be abandoned and took it without any felonious or evil intent.

Petitioner believes the question raised by this appeal is an important one as Section 641 is a consolidation of Sections 82, 87, 100 and 101 of Title 18, United States Code, 1940 edition, and as all of the cases brought under the consolidated sections show felonious intent, an evil intent, dishonest intent, is an element of the crimes denounced by these sections and this is the first case so far as petitioner can ascertain after careful search, construing Section 641, Title 18, United States Code.

Section 82 of Title 18, United States Code, 1940 edition, provides:

> "Whoever shall take and carry away or take for his own use, or for the use of another, with intent to steal or purloin, any personal property of the United States, or any branch or department thereof, or any corporation in which the United States of America is a stockholder, shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

A felonious intent is part of the crime denounced under Section 82 quoted above. *U. S.* v. *Trinder*, 1 Fed. Supp. 659; *U. S.* v. *Anderson*, D. C., Cal. 1942, 45 Fed. Supp. 943.

Section 87 of Title 18, United States Code, 1940 edition, provides:

> "Whoever shall steal, embezzle, or knowingly apply to his own use, or unlawfully sell, convey, or dispose of, any ordnance, arms, ammunition, clothing, subsistence, stores, money, or other property of the United States, furnished or to be used for the military or naval service, shall be punished as prescribed in sections 80 and 82 to 86 of this title."

In the case of *Adolfson* v. *U. S.*, C. C. A., Cal., 1947, 159 Fed. (2d) 883, prosecution was had under Section 87, Title 18, United States Code, 1940 edition, for knowingly applying to his use property furnished or to be used for the military or naval service, and it was held in this case that knowledge on the part of the accused that the property was stolen was an ingredient of the offense charged under Section 87. The decision holds that guilty knowledge is a part of the offense.

Martin, Circuit Judge, in writing the majority opinion in this case, cited the *Adolfson* case in support of the majority decision and opinion. The *Adolfson* case does hold

that unlawfully, wilfully and knowingly applying to their own use property of the United States is an offense under section 87, however, the case also holds that guilty knowledge is an ingredient of the offense. This is shown by McAllister, Circuit Judge, in the dissenting opinion shown on page 87 of the record.

Bone, Circuit Judge, delivered the opinion in the *Adolfson* case and stated as follows:

> "The 'guilty knowledge,' if it existed, necessarily had to be and could be shown by all the surrounding facts and circumstances. To establish this claimed guilty knowledge as a relevant and material fact, the prosecution introduced evidence showing appellant's acts and statements at the time of the purchase, which it claimed revealed a clear intention and purpose to accomplish the unlawful acts charged in the indictment. We regard this evidence as relevant and competent for the purpose of showing the charged 'guilty knowledge' as a fact. This because the existence of this 'knowledge' of the character and value of the property was a material and necessary element in the prosecution's chain of evidence, and it was therefore proper to submit it to the jury on the question of whether or not this guilty knowledge existed and was proven beyond a reasonable doubt."

The *Adolfson* case is the only case that I have found which charges unlawfully, wilfully and knowingly applying to their own use property of the United States. It makes guilty knowledge an ingredient of the offense. The decision in the *Adolfson* case is in conflict with the decision in this case in that guilty knowledge was required in the *Adolfson* case and it is not required under the majority opinion in this case. Moreover, in this case petitioner was charged with stealing as well as knowingly converting to his own use, property of the United States.

Section 100 of Title 18, United States Code, 1940 edition, provides:

> "Whoever shall embezzle, steal, or purloin any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, shall be fined not more than $5,000, or imprisoned not more than five years, or both."

In the case of *Crabb* v. *Zerbst*, 99 Fed. 2d, 562, consideration was given to the above section and the words steal or purloin as used in the section are discussed. The court said:

> "Larceny is hedged about by its common-law definition. Embezzlement must be considered to have its classical meaning and to stand at the opposite extreme of the offenses dealt with in these two sections. Between them there lies a gap which has grown wider and wider as the multifarious activities of the central government have spread and increased. Stealing, having no common law definition to restrict its meaning as an offense, is commonly used to denote any dishonest transaction whereby one person obtains that which rightfully belongs to another, and deprives the owner of the rights and benefits of ownership."

The above shows that a dishonest intent, felonious intent, or evil intent is an ingredient of Section 100, Title 18, United States Code, 1940 edition.

Section 101 of Title 18, United States Code, 1940 edition, provides:

> "Whoever shall receive, conceal, or aid in concealing, or shall have or retain in his possession with intent to convert to his own use or gain, any money, property, record, voucher, or valuable thing whatever, of the moneys, goods, chattels, records, or property of the United States, which has theretofore been embezzled, stolen, or purloined by any other person, knowing the

same to have been so embezzled, stolen, or purloined, shall be fined not more than $5,000, or imprisoned not more than five years, or both; and such person may be tried either before or after the conviction of the principal offender."

Lewis v. *Hudspeth*, 103 Fed. Rep. 2d Series, 23, the court there said:

"Said Section 101, Title 18, U. S. C. A., includes two distinct offenses. To convict the accused on the first count of feloniously retaining the possession of the stolen property, it was not necessary to prove that the accused knew the property was stolen at the time he received it, it being sufficient to establish that he retained it knowing of its stolen character. To convict under the second count, it was essential to prove that the accused received and concealed the property, knowing the same was stolen at the time he received and concealed same."

The above shows that guilty knowledge, felonious intent, dishonest purpose was an ingredient of the crime charged under this section.

The foregoing sections were consolidated in Section 641 of Title 18, United States Code by H. R. 3190, an act to revise, codify, and enact into positive law, Title 18 of the United States Code, entitled "Crimes and Criminal Procedure."

Section 641 of Title 18, United States Code, is the first section in chapter 31 of the code of Crimes and Criminal procedure. This chapter is entitled Embezzlement and theft. The section 641 has been quoted at the beginning of this brief. The reviser's notes are as follows:

"Section consolidates sections 82, 87, 100, and 101 of title 18 U. S. C., 1940 ed. Changes necessary to effect the consolidation were made. Words 'or shall willfully injure or commit any depredation against' were

taken from said section 82 so as to confine it to embezzlement or theft.

The quoted language, rephrased in the present tense, appears in section 1361 of this title.

Words 'in a jail' which followed 'imprisonment' and preceded 'for not more than one year' in said section 82, were omitted. (See reviser's note under section 1 of this title.)

Language relating to receiving stolen property is from said section 101.

Words 'or aid in concealing' were omitted as unnecessary in view of definitive section 2 of this title. Procedural language at end of said section 101 'and such person may be tried either before or after the conviction of the principal offender' were transferred to and rephrased in section 3435 of this title.

Words 'or any corporation in which the United States of America is a stockholder' in said section 82 were omitted as unnecessary in view of definition of 'agency' in section 6 of this title. The provisions for fine of not more than $1,000 or imprisonment of not more than 1 year for an offense involving $100 or less and for fine of not more than $10,000 or imprisonment of not more than 10 years, or both, for an offense involving a greater amount were written into this section as more in conformity with the later congressional policy expressed in sections 82 and 87 of title 18, U. S. C., 1940 ed., than the nongraduated penalties of sections 100 and 101 of said title 18.

Since the purchasing power of the dollar is less than it was when $50 was the figure which determined whether larceny was petit larceny or grand larceny, the sum $100 was substituted as more consistent with modern values.

The meaning of 'value' in the last paragraph of the revised section is written to conform with that provided in section 2314 of this title by inserting the words 'fact, par, or.'

This section incorporates the recommendation of Paul W. Hyatt, president, board of commissioners of

the Idaho State Bar Association, that sections 82 and 100 of title 18, U. S. C., 1940 ed., be combined and simplified.

Also, with respect to section 101 of title 18, U. S. C., 1940 ed., this section meets the suggestion of P. F. Herrick, United States attorney for Puerto Rico, that the punishment provision of said section be amended to make the offense a misdemeanor where the amount involved is $50 or less.

Changes were made in phraseology."

The decision of the Circuit Court of Appeals in this case, affirming the holding of the Trial Court to the effect that felonious intent, evil intent, guilty knowledge or the state of mind on the part of the accused, is not an element of the crime charged, is the first decision of a Circuit Court of Appeals construing Section 641, Title 18, U. S. C., and it is in conflict with the decisions of the Circuit Court of Appeals for the Ninth Circuit in the case of *Adolfson* v. *U. S.*, 159 Fed. 2d, 883, where Section 87 of Title 18, U. S. C., 1940 ed., was before that court and it is in conflict with the decision of the Circuit Court of Appeals for the Fifth Circuit in the case of *Crabb* v. *Zerbst*, 99 Fed. 2d, 562, where that court had before it Section 100 U. S. C., 1940 ed. It is in conflict with all of the previous decisions construing the sections that were consolidated into section 641 and, as this is the first decision of a Circuit Court of Appeals construing section 641, title 18, U. S. C., an important question of federal law has not been, but should be, settled by this court. It is further submitted that the decision of the Sixth Circuit Court of Appeals in this case is in conflict with the applicable decisions of this court and this decision has so far departed from the accepted and usual course of judicial procedure as to call for an exercise of this court's power of supervision.

The verdict in this case convicting the petitioner of the crime charged in the indictment convicted him of unlaw-

fully, willfully and knowingly stealing and converting to his own use property of the United States, citing *Statler* v. *U. S.*, 157 U. S. 277, 39 Law. Ed. 700, Mr. Justice White delivered the opinion of the court and said:

"So likewise a general finding of guilty will be interpreted as guilty of all that the indictment well alleges."

22 *C. J. S.*, Section 30, states:

"By the express terms of a statute guilty knowledge is sometimes made an essential ingredient of the offense, as where it requires the act to be done 'knowingly,' etc. On the other hand, the legislature may forbid the doing of or the failure to do an act and make its commission or omission criminal without regard to the intent or knowledge of the doer, and if such legislative intention appears the courts must give it effect, and in such cases, the doing of the inhibited act constitutes the crime, and the moral turpitude or purity of the motive by which it was prompted, and knowledge or ignorance of its criminal character, are immaterial circumstances on the question of guilt; such legislation is enacted and is sustained, for the most part, on grounds of necessity, and is not violative of the federal constitution. However, it has been stated that the police power of the state is not without limitations, and that a penal law will not be valid where it makes criminal an act which the utmost care and circumspection would not enable one to avoid; nor can such power be exercised to the extent of preventing one accused of crime from invoking the defense of insanity.

Whether or not criminal intent or knowledge is an element of a statutory crime is a matter of statutory construction to be determined in a given case by considering the subject matter of the prohibition as well as the language of the statute, and thus ascertaining the intention of the legislature. As a general rule, the statute is to be construed in the light of the common law and the existence of a criminal intent is to be re-

garded as essential, even when not in terms required, especially in the case of crimes involving moral turpitude. A 'criminal mind' is not an element of the offense in the case of statutory crimes not involving moral turpitude passed in aid of the police power of the state, where the word 'knowingly' or other apt words are not employed to indicate that knowledge or intent is an essential element of the crime charged; but the absence of such words is not conclusive as to the legislature's intention. Whether or not a criminal intent is necessary in the case of specific statutory crimes is discussed in the particular crimes titles in this work.

Whatever may be the true construction of the statute, when, with a knowledge of all the facts, one deliberately violates a positive law which he is presumed to know, he cannot be excused on the ground that he intended no wrong; but the rule applies only to unlawful acts which are voluntarily, and in that sense intentially, done."

The dissenting opinion in this case by McAllister, Circuit Judge, sets forth the position of the petitioner in this case. The dissenting opinion discusses scienter. The meaning of willfully and knowingly when used in criminal statutes. The history and background of this statute and shows that felonious intent is an ingredient of the crime charged in the indictment of which the petitioner was convicted and that the same should have been submitted as an issue to be decided by the jury. The dissenting opinion also shows that the issue of abandonment should have been submitted to the jury. The dissenting opinion is a strong argument for the granting of the writ of certiorari in this case and reference is made to the dissenting opinion and the decisions therein cited that consideration of the dissenting opinion will be had in determining whether or not the writ will issue. The majority opinion rules out felonious intent as an ingredient of the crime charged and says that the

statute is violated when a person knowingly converts to his own use government property. The opinion of the trial court on petitioner's motion for a new trial was not included in the record and probably should have been. I am taking the liberty to set forth the opinion of the trial court on petitioner's motion for a new trial as an argument for the granting of the writ of certiorari under that part of rule 38 that the trial court so far departed from the accepted and usual course of judicial proceedings as to call for an exercise of this court's power of supervision.

UNITED STATES OF AMERICA, IN THE DISTRICT COURT OF THE UNITED STATES, FOR THE EASTERN DISTRICT OF MICHIGAN, NORTHERN DIVISION

No. 4469

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOSEPH EDWARD MORISSETTE,

Defendant

OPINION OF THE COURT

The motion of defendant for a new trial in the above matter is hereby denied.

This is a question of statutory construction and in order to arrive at a conclusion it is necessary to know that the defendant was charged with violation of Section 641, Title 18 of U. S. C. which reads as follows:

> "Whoever embezzles, steals, purloins, or knowingly converts to his use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof;"

The Reviser's notes indicate that this section is a combination of former sections 82, 87, 100 and 101 of Title 18 of the Code.

In Section 82 the words used are

"with *intent* to *steal* or *purloin*,"

In Section 87 the words are

> "whoever shall *steal, embezzle, or knowingly apply to his own use*"

The words used in Section 100 are

> "whoever shall *embezzle, steal* or *purloin* any money, property . . ."

And in Section 101

> "whoever shall *receive, conceal,* or *aid in concealing*" etc. (Emphasis ours.)

It is well to note the exact words of Section 641. The word "Steal" is used and the common law definition of larceny does not apply. The word "steal" has no common law definition

> "to restrict its meaning as an offense and is commonly used to denote any dishonest transaction, whereby one person obtains that which rightfully belongs to another, and deprives the owner of the rights and benefits of ownership." It does not necessarily mean "purloin."

See *Crabb* v. *Zerbst*, 99 F. 2d 562.

First, it was evidently the intent of Congress that it was not necessary that this man or any other knowingly do the criminal act encompassed by Section 641. Stealing itself presumes a criminal intent and there is no expressed requirement of intent in the statutory offense.

The second reason for denial of defendant's motion is that intent can be presumed from the act itself but the court did submit to the jury the question of whether this man intended to take property that didn't belong to him.

Our third reason is that no real issue of abandonment was raised by the evidence. The claim of abandonment was too specious to be submitted to a jury.

While intent is generally required by the criminal law it is not a requirement of this provision as we interpret it under our statutory construction.

FRANK A. PICARD,
United States District Judge.

Dated: August 1, 1949.

Volume 34, No. 5, February, 1951, *Journal of the American Judicature Society*, has an editorial "Justice and Righteousness" founded on a text from Amos 5:24

> Let judgment roll down as waters, and righteousness as a mighty stream.

The following, taken from St. Matthew, 15:19, 20 also appears to me to be in point:

> For out of the heart proceed evil thoughts, murders, adulteries, fornications, thefts, false witness, blasphemies:
>
> These are the things which defile a man: but to eat with unwashen hands defileth not a man.

It is respectfully submitted that the case here is an important one to Joseph Morissette, the petitioner, and to all of the citizens of the United States. It is recognized that there are cases such as *U. S.* v. *Balint*, 258 U. S. 250, where intent is not involved. However, it is respectfully submitted guilty knowledge, dishonest purpose, evil intent is necessary under Section 641, Title 18, U. S. C. in order to convict petitioner of being a thief as he now stands convicted and it is therefore respectfully submitted that petitioner's application for a writ should be granted.

Dated: March 5, 1951.

ANDREW J. TRANSUE,
Attorney for Petitioner,
303 Dryden Building,
Flint, Genesee County, Michigan.